IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 167 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

N K PRAJAPATI - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner-State Road Transport Corporation has challenged the legality of the award dated 31st January, 2000 passed by the Labour Court, Godhra.

2. Respondent-workman was employed as a conductor by

the petitioner-corporation. On 27th July, 1995 in bus in which the respondent was discharging his duties as a conductor was checked by the Checking Squad and it was found that the respondent had collected fare from three passengers but had not issued tickets. Upon the conclusion of the departmental inquiry the petitioner ordered dismissal of respondent from service. The respondent challenged the punishment before the Labour Court by raising a dispute. The Labour Court in its impugned award came to the conclusion that there was no dishonest intention on the part of the respondent in not issuing the tickets. The Labour Court however, concluded that the respondent erred in not issuing the tickets and to that extent he had committed misconduct. In the result, the Labour Court was pleased to set aside the order of dismissal. The workman was ordered to be reinstated in service without back wages and punishment of withholding of two increments permanently was ordered to be imposed on him.

3. While admitting the petition, this Court had not granted stay against reinstatement of the workman. The petitioner employer, therefore, subject to outcome of the petition reinstated the respondent. Learned advocate

Shri Raval appearing for the petitioner submits that having been worked from the year 2001 upon reinstatement the respondent had also reached the age of superannuation and is made to retire w.e.f. 30th April, 2005.

4. In so far as the conclusion of the Labour Court regarding the involvement of the respondent is concerned, I am unable to agree with the same. In the departmental inquiry through cogent evidence, it was held that the respondent though had collected fare from three passengers he had not issued tickets to them. The bus was checked after considerable distance after the passengers boarded the bus. Therefore there was no excuse on the part of the respondent in not issuing the tickets. Ordinarily, therefore, this Court would have been inclined to restore the punishment imposed by the employer. In the present case, however, there are certain mitigating circumstances. As recorded earlier the respondent was reinstated pursuant to the award passed by the Labour Court. Since then he had already crossed the age of superannuation. The Labour Court has recorded that this is the first misconduct of the respondent. There is no contrary material available on record to disregard this observation of the Labour Court.

The Labour Court in its direction had provided for withholding of entire back wages and had ordered imposition of punishment of withholding of two increments with future effect. Considering all these aspects of the matter, I find it inequitable in facts of the present case to permit the petitioner to have resort to the original penalty of dismissing the respondent from service. The respondent having committed misconduct can also not be allowed to go scot free. In facts of the present case, therefore, I find that ends of justice would be served if the respondent is ordered to be visited with the penalty of withholding of four increments with future effect instead of two as ordered by the Labour Court. The award of the Labour Court is modified accordingly. Now that the litigation with respect to the dismissal of the respondent has come to an end, it is expected that the petitioner shall release the post retiral dues of the respondent after implementing the penalty as directed in this order. Petition is allowed to the above extent. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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